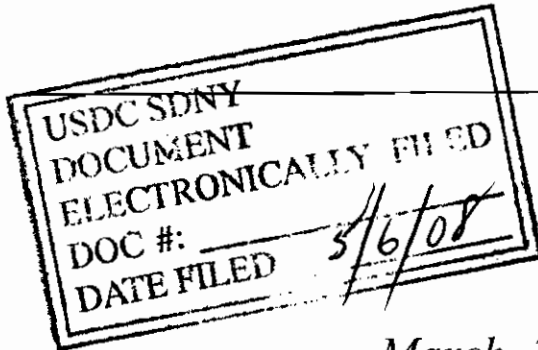


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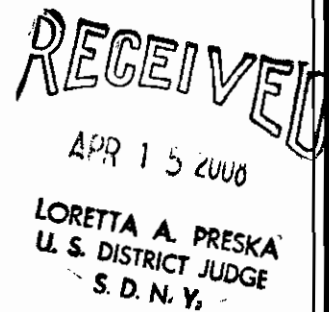
In The Matter Of:

07 CR 890 (LAP)

UNITED STATES OF AMERICA v.
JAMES LYONS,



March 24, 2008



CONFERENCE
SOUTHERN DISTRICT REPORTERS
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JAMES LYONS,

March 24, 2008

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83orlyop
 [1] UNITED STATES DISTRICT COURT
 [2] SOUTHERN DISTRICT OF NEW YORK
 [3] -----x
 [4] UNITED STATES OF AMERICA
 [5] v. 07 Cr. 890 (LAP)
 [6] JAMES LYONS, Plea
 [7] Defendant.
 [8] -----x
 [9] New York, N.Y.
 [10] Before: March 24, 2008
 [11] HON. ANDREW J. PECK 10:15 a.m.
 [12] Magistrate Judge
 [13] APPEARANCES
 [14]
 [15] MICHAEL J. GARCIA
 [16] United States Attorney for the
 [17] Southern District of New York
 [18] One St. Andrews Plaza
 [19] New York, New York 10007
 [20] PARVIN D. MOYNE
 [21] Assistant United States Attorney
 [22]
 [23] FEDERAL DEFENDERS OF NEW YORK, INC.
 [24] Attorneys for Defendant
 [25] 52 Duane Street, 10th Floor
 New York, New York 10007
 (212) 417-8700
 BY: FIONA DOHERTY, ESQ.

[1] you completed?
 [2] THE DEFENDANT: Juris doctorate 1997.
 [3] THE COURT: Are you a United States citizen, Mr.
 [4] Lyons?
 [5] THE DEFENDANT: Yes, sir.
 [6] THE COURT: Are you currently or have you recently
 [7] been under the care of a doctor, a psychiatrist, or any other
 [8] medical or mental health professional?
 [9] THE DEFENDANT: I'm undergoing marriage counseling and
 [10] family counseling with a local psychologist. I'm under no
 [11] medication.
 [12] THE COURT: Is there anything in your counseling that
 [13] in any way would prevent you from being clear and understanding
 [14] and proceeding in court today?
 [15] THE DEFENDANT: No, your Honor.
 [16] THE COURT: Have you ever been treated for alcoholism
 [17] or drug addiction?
 [18] THE DEFENDANT: No, your Honor.
 [19] THE COURT: Do you feel physically and mentally all
 [20] right and able and willing to proceed with your case today?
 [21] THE DEFENDANT: Yes.
 [22] THE COURT: Are you having any difficulty seeing or
 [23] hearing or understanding what I'm saying to you?
 [24] THE DEFENDANT: No. I'm fine, your Honor.
 [25] THE COURT: You've got a law degree, so you'll

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[1] (Case called)
 [2] THE COURT: Counsel, state your appearances for the
 [3] record.
 [4] MS. MOYNE: Parvin Moyne for the government. Good
 [5] morning, your Honor.
 [6] MS. DOHERTY: Good morning, your Honor. Fiona Doherty
 [7] Federal Defenders of New York, for Mr. Lyons, who is seated
 [8] beside me in court today.
 [9] THE COURT: Mr. Lyons, please stand. Is this your
 [10] signature on the consent to proceed form?
 [11] THE DEFENDANT: Yes, it is, your Honor.
 [12] THE COURT: Before you signed it, did your attorney
 [13] explain to you that you have the right to have your plea heard
 [14] before the district judge, Judge Preska, but that if you
 [15] consent, I can hear your plea and I'll make a recommendation to
 [16] Judge Preska?
 [17] THE DEFENDANT: Yes, she did, your Honor.
 [18] THE COURT: You have agreed to that?
 [19] THE DEFENDANT: I did.
 [20] THE COURT: Please raise your right hand.
 [21] (Defendant sworn)
 [22] THE COURT: State your full name for the court
 [23] reporter's record.
 [24] THE DEFENDANT: James Daniel Lyons.
 [25] THE COURT: What is the last grade of schooling that

[1] understand more here than most people. Nevertheless, if at any
 [2] point either you don't understand what I'm telling you or what
 [3] I'm asking you or for whatever reason you don't hear what I'm
 [4] saying, don't try to finesse or fake your way through it; just
 [5] ask me to be clear or louder or both. Is that agreed?
 [6] THE DEFENDANT: I agree, your Honor. Thank you.
 [7] THE COURT: Have you received a copy of the indictment
 [8] against you?
 [9] THE DEFENDANT: I have.
 [10] THE COURT: Have you reviewed it with Ms. Doherty?
 [11] THE DEFENDANT: I have.
 [12] THE COURT: Do you wish me to publicly read it out
 [13] loud now?
 [14] THE DEFENDANT: No, I do not.
 [15] THE COURT: You've talked with Ms. Doherty about the
 [16] charges you're facing and how you wish to plead?
 [17] THE DEFENDANT: I have.
 [18] THE COURT: Are you satisfied with the representation
 [19] that she has been and is giving to you?
 [20] THE DEFENDANT: I have.
 [21] THE COURT: I'm not sure an "I have" works on that
 [22] one.
 [23] THE DEFENDANT: I'm very satisfied, your Honor.
 [24] THE COURT: Thank you. Are you ready to enter a plea
 [25] at this time?

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[1] **THE DEFENDANT:** I am, your Honor.

[2] **THE COURT:** What is your plea?

[3] **THE DEFENDANT:** Guilty.

[4] **THE COURT:** Now I'm going to ask you some questions to
[5] make sure, even though you have a law degree, that you
[6] understand some of the charges you're facing and some of the
[7] rights you're giving up and some of the consequences of
[8] pleading guilty. Do you understand that you are charged with
[9] bank fraud and that that carries a maximum sentence of 30
[10] years' imprisonment, a maximum of 5 years' supervised release,
[11] a maximum fine of the greatest of \$1 million or twice the gross
[12] gain or loss from the offense, and a mandatory \$100 special
[13] assessment?

[14] **THE DEFENDANT:** I understand, your Honor.

[15] **THE COURT:** Do you understand that you have the right
[16] to plead not guilty and the right to a jury trial on these
[17] charges?

[18] **THE DEFENDANT:** I understand.

[19] **THE COURT:** Do you understand that if you were to
[20] plead not guilty and go to trial, you would be presumed
[21] innocent unless and until the government could prove your guilt
[22] beyond a reasonable doubt?

[23] **THE DEFENDANT:** I understand, your Honor.

[24] **THE COURT:** Do you understand that at a trial you have
[25] the right to be represented by an attorney during all

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[1] proceedings up to and including the trial, and that, if
[2] necessary, an attorney will be appointed for you free of
[3] charge?

[4] **THE DEFENDANT:** I understand, your Honor.

[5] **THE COURT:** Do you understand that at a trial you
[6] would have the right yourself and/or through your attorney to
[7] confront and question anybody who testifies against you?

[8] **THE DEFENDANT:** I understand, your Honor.

[9] **THE COURT:** Do you understand that at a trial you
[10] would have the right not to be forced to incriminate yourself,
[11] so nobody, not Ms. Doherty, not the prosecutor, not Judge
[12] Preska, nobody could force you to testify at trial if by doing
[13] so you thought you might incriminate yourself; but on the other
[14] hand, after getting Ms. Doherty's legal advice, you would have
[15] the right to testify if you wished to do so?

[16] **THE DEFENDANT:** I understand, your Honor.

[17] **THE COURT:** Do you understand that at a trial you
[18] could call witnesses to testify on your own behalf and that the
[19] court would issue subpoenas to get them to trial if necessary?

[20] **THE DEFENDANT:** I understand, your Honor.

[21] **THE COURT:** Do you understand that if you do plead
[22] guilty, there will be no trial of any kind, so that you are
[23] giving up your right to a trial, waiving any defenses you may
[24] have, including any possible claim that your constitutional
[25] rights may have been violated?

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[1] **THE DEFENDANT:** I understand, your Honor.

[2] **THE COURT:** Do you understand the nature of the
[3] charges that you are facing and the range of penalties you
[4] face, including those I advised you of a few moments ago?

[5] **THE DEFENDANT:** I understand, your Honor.

[6] **THE COURT:** Have you and Ms. Doherty talked about how
[7] the United States Sentencing Commission guidelines and the
[8] additional sentencing factors in 18 U.S. Code section 3553 may
[9] apply to your case?

[10] **THE DEFENDANT:** We have discussed it, your Honor.

[11] **THE COURT:** Do you understand that under the
[12] sentencing guidelines in section 3553 Judge Preska is required
[13] to take into account a number of factors in imposing sentence
[14] upon you, including but not limited to the conduct in which you
[15] engaged, the victim of the offense, the role you played in the
[16] offense, whether you have accepted responsibility for your
[17] acts, whether you have any criminal history, and whether you
[18] have engaged in any obstruction of justice? Do you understand
[19] that?

[20] **THE DEFENDANT:** I understand, your Honor.

[21] **THE COURT:** Between now and the date of sentencing,
[22] the probation department will interview you, conduct a further
[23] investigation, and prepare a pre-sentence report. You and your
[24] attorney will get copies. The prosecutor and Judge Preska will
[25] also get copies. If you or Ms. Doherty on the one hand or the

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[1] prosecutor on the other believes anything in the pre-sentence
[2] report is inaccurate or incorrect, each side will have the
[3] opportunity to file objections to the report. Do you
[4] understand that?

[5] **THE DEFENDANT:** I understand, your Honor.

[6] **THE COURT:** Do you understand that Judge Preska will
[7] not be able to determine what sentencing guidelines or other
[8] 3553 sentencing factors apply to your case until after the
[9] pre-sentence report has been completed and after any objections
[10] by either side have been filed and ruled upon?

[11] **THE DEFENDANT:** I understand, your Honor.

[12] **THE COURT:** Do you understand that as is now clear
[13] after Supreme Court decisions, the sentencing guidelines are
[14] just that, they are guidelines, which means that Judge Preska
[15] can give you a sentence within the guideline range, less than
[16] the guideline range, or greater than the guideline range, but
[17] of course cannot exceed the statutory maxima for the offense?

[18] **THE DEFENDANT:** I understand, your Honor.

[19] **THE COURT:** Do you also understand that under some
[20] circumstances you and/or the government may have the right to
[21] appeal from any sentence that you receive?

[22] **THE DEFENDANT:** I understand, your Honor.

[23] **THE COURT:** I don't know what sentence you may be
[24] hoping for as you stand here today, but do you understand that
[25] even if the sentence you receive from Judge Preska is more

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[1] severe than that, you will still be bound by your guilty plea
[2] and not permitted to withdraw it?

[3] **THE DEFENDANT:** I understand, your Honor.

[4] **THE COURT:** Do you understand that in the federal
[5] system parole has been abolished so that if you are sentenced
[6] to prison, you will not be released early on parole?

[7] **THE DEFENDANT:** I understand, your Honor.

[8] **THE COURT:** If you are sentenced to a term of
[9] supervised release and you violate any of the conditions of
[10] that release, you face additional punishment, including
[11] additional imprisonment up to the maximum allowed by law?

[12] **THE DEFENDANT:** I understand, your Honor.

[13] **THE COURT:** Do you also understand that in addition to
[14] the criminal law consequences we've been talking about, there
[15] are civil consequences to a plea of guilty or conviction here,
[16] including but not limited to the possible loss of your law
[17] license, or the definite loss of your law license, and other
[18] possible consequences: Loss of voting rights, losses of the
[19] ability to hold other jobs, etc.?

[20] **THE DEFENDANT:** I understand, your Honor. Just for
[21] the record, I never practiced law, although I was admitted.

[22] **THE COURT:** Thank you. Do you understand that the
[23] answers you have been and are and will be giving me today can
[24] be used against you in a prosecution for perjury or false
[25] statements if you are not telling me the truth?

[1] **THE DEFENDANT:** I do, your Honor.

[2] **THE COURT:** Are you doing so because you are in fact
[3] guilty of the crime charged?

[4] **THE DEFENDANT:** That is correct, your Honor, I am
[5] guilty.

[6] **THE COURT:** Ms. Doherty, have you talked with Mr.
[7] Lyons about the charges he is facing and the consequences of
[8] pleading guilty?

[9] **THE DEFENDANT:** I have, your Honor.

[10] **THE COURT:** In your view, does he understand what he
[11] is doing?

[12] **MS. DOHERTY:** He does.

[13] **THE COURT:** In your view, is he pleading guilty
[14] because, based on what you know from him and from discovery
[15] from the government, he is in fact guilty?

[16] **MS. DOHERTY:** Yes, your Honor.

[17] **THE COURT:** Please tell me in your own words, Mr.
[18] Lyons, what it is that you did.

[19] **THE DEFENDANT:** Regrettably, your Honor, I opened up
[20] an unauthorized account for the company I worked for at
[21] Wachovia Bank. I then deposited a number of company checks in
[22] this unauthorized account and withdrew the funds. Many of
[23] these deposits were made in New York City. At the time I knew
[24] what I was doing. It was regrettable, wrong, and I'm very
[25] sorry.

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[1] **THE DEFENDANT:** I understand, your Honor.

[2] **THE COURT:** Mr. Lyons, have any threats been made to
[3] you by anyone to convince you to plead guilty?

[4] **THE DEFENDANT:** No.

[5] **THE COURT:** I have a copy of the so-called Pimentel
[6] letter from the government to your counsel dated November 6,
[7] 2007. Other than the information contained in there, has
[8] anybody made any promise to you in any way to convince you or
[9] influence you to plead guilty?

[10] **THE DEFENDANT:** No, your Honor.

[11] **THE COURT:** In particular, has anybody made you any
[12] promise in any way, shape, or form as to the sentence that you
[13] are going to get from Judge Preska?

[14] **THE DEFENDANT:** No, your Honor.

[15] **THE COURT:** Do you understand that the government's
[16] calculation at least is that the sentencing range for your
[17] crime is 18 to 24 months?

[18] **THE DEFENDANT:** I understand, your Honor.

[19] **THE COURT:** That doesn't bind you, it doesn't bind the
[20] court, but that's the government's calculation. Do you
[21] understand that?

[22] **THE DEFENDANT:** I understand, your Honor.

[23] **THE COURT:** Having now gone through, Mr. Lyons, some
[24] of the consequences of pleading guilty and some of the rights
[25] you're giving up, do you still wish to plead guilty?

[1] **THE COURT:** For the record, when you said New York
[2] City -- because, as you may recall, New York City is the only
[3] city in the country divided into two judicial districts -- did
[4] any of your conduct take place in Manhattan or the Bronx?

[5] **THE DEFENDANT:** Yes, your Honor.

[6] **THE COURT:** When you say that you deposited company
[7] checks and then withdrew the funds, were those checks that were
[8] legitimately made out to you?

[9] **THE DEFENDANT:** No, they were not. They were made out
[10] to my employer, the company.

[11] **THE COURT:** So you were depositing someone else's
[12] money into a account you controlled and then taking the money?

[13] **THE DEFENDANT:** That is correct, your Honor.

[14] **THE COURT:** Did you know that what you did was wrong?

[15] **THE DEFENDANT:** I did, your Honor.

[16] **MS. MOYNE:** Your Honor, the government proffers that
[17] at the time of the execution of this scheme, Wachovia Bank was
[18] insured by the FDIC.

[19] **THE COURT:** I think we can all take judicial notice of
[20] that or its equivalent. For the record, Ms. Doherty, I assume
[21] you consent to that.

[22] **MS. DOHERTY:** Yes, your Honor.

[23] **THE COURT:** Any additional questions the government
[24] can suggest?

[25] **MS. MOYNE:** Yes, your Honor. I apologize if I missed

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(11) the Court's inquiry, but if the Court could inform the
(12) defendant that restitution in this case is mandatory and about
(13) the effects of the violation of supervised release.

(14) **THE COURT:** The supervised release I did already
(15) discuss.

(16) **MS. MOYNE:** I apologize.

(17) **THE COURT:** That's OK. But I didn't mention anything
(18) about restitution.

(19) Do you understand that restitution is mandatory in
(20) this case and that you will have to pay some amount of
(21) restitution?

(22) Has the government determined an amount at this time?

(23) **MS. MOYNE:** Your Honor, we are still in discussions
(24) with defense counsel about the exact amount.

(25) **THE COURT:** Do you understand that you will need to
(26) make restitution, Mr. Lyons?

(27) **THE DEFENDANT:** I do, your Honor.

(28) **THE COURT:** Ms. Doherty, do you know of any reason why
(29) Mr. Lyons should not plead guilty or why I should not recommend
(30) to Judge Preska acceptance of this plea?

(31) **MS. DOHERTY:** No, your Honor.

(32) **THE COURT:** Ms. Moyne?

(33) **MS. MOYNE:** No, your Honor.

(34) **THE COURT:** I'm satisfied, Mr. Lyons, that you
(35) understand the nature of the charges you're facing and the

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(11) consequences of pleading guilty. I'm also satisfied that your
(12) plea is made freely, voluntarily, and knowingly, and that there
(13) is a factual basis for the plea.

(14) Actually, the one thing that I don't know that I got
(15) is the time period that this occurred. When did this occur,
(16) Mr. Lyons?

(17) **THE DEFENDANT:** 2004 till 2006 is my recollection,
(18) your Honor.

(19) **THE COURT:** Thank you. I therefore recommend to Judge
(20) Preska that she accept Mr. Lyons' plea of guilty to the
(21) indictment.

(22) Has a date for sentencing been set?

(23) **MS. DOHERTY:** Yes, your Honor, June 26, 2008.

(24) **THE COURT:** At?

(25) **MS. MOYNE:** I unfortunately didn't write down the
(26) time.

(27) **MS. DOHERTY:** 4 o'clock.

(28) **MS. MOYNE:** At 4 o'clock.

(29) **THE COURT:** Your sentencing will take place on June
(30) 26th at 4:00 p.m. If there is any change in that because of a
(31) change in Judge Preska's calendar or anything else, Ms. Doherty
(32) will be notified and she will notify you.

(33) In the meantime, I direct that a pre-sentence report
(34) be prepared. You need to cooperate with the probation
(35) department as they do that because that is a critical part of

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(11) the sentencing phase of your case. You understand that and
(12) will so cooperate, correct?

(13) **THE DEFENDANT:** I understand that, yes, your Honor,
(14) yes.

(15) **THE COURT:** If you and Ms. Doherty wish, I will have
(16) the clerk mark the record now to indicate that any such
(17) conference with the probation staff occur only in the presence
(18) of Ms. Doherty or one of her colleagues.

(19) **MS. DOHERTY:** Yes, please, your Honor.

(20) **THE COURT:** The record is so marked. I take it, but
(21) maybe I shouldn't, that Mr. Lyons has previously been
(22) presented, is that correct, and bail has been set?

(23) **MS. MOYNE:** That's correct, your Honor.

(24) **THE COURT:** Bail will be continued as previously set.
(25) Any applications in that regard can be taken up with Judge
(26) Preska. Ms. Moyne, I direct you on behalf of the office to
(27) make the arrangements to obtain the transcript of the plea
(28) colloquy and present it to Judge Preska along with any other
(29) cover paperwork she may require.

(30) **MS. MOYNE:** Yes, your Honor.

(31) **THE COURT:** With that, we are adjourned.
(32) (Adjourned)

(33)

(34)

(35)

*The plea is accepted.
Sentencing shall be on June 26,
2008 at 4:00pm So ordered
Loretta A. Preska
usdg
May 5, 2008*